

Court of Appeals, State of Michigan

ORDER

Sean Timothy O'Neill v Secretary of State

Docket No. 293532

LC No. 09-004092-AL

David H. Sawyer
Presiding Judge

Joel P. Hoekstra

Jane E. Markey
Judges

The Court orders that the application for leave to appeal is GRANTED. This matter is REMANDED to the administrative hearing officer for a reopening of proofs limited to the circumstances surrounding, and the contents of, the "conversation" preceding petitioner's submitting to the preliminary breath test, as alluded to in Deputy Kimbrough's testimony on page 6 of the hearing transcript. MCL 7.216(A)(5). The hearing officer shall hear the matter within 21 days after the Clerk's certification of this order. The hearing officer shall then make findings regarding the voluntariness of petitioner's ultimate decision to take that test, and shall cause a transcript of the hearing on remand to be prepared and filed within 14 days after the completion of the proceedings.

Pursuant to MCR 7.216(A)(9), this Court directs that the parties then address in their briefs to this Court the issues raised in the application for leave as well as the following legal question:

Even if the standard for requiring petitioner to submit to a preliminary breath test set forth in MCL 257.625a(2) was not met, if petitioner nonetheless voluntarily submits to it, can the result of that test be a proper basis for requiring the chemical test?

The motion to file a reply to the answer is GRANTED and the answer filed with the motion is accepted.

The time for taking further steps in this appeal runs from 21 days after the date the hearing officer issues the findings required by this order.

We retain jurisdiction.

Sawyer, P.J., would grant the application on the record created below and would not remand for further evidentiary findings.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 15 2009
Date

Sandra Schultz Mengel
Chief Clerk